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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/521,308	03/09/2000	Bruce A. Fairman	50N3545/1309	2383

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EXAMINER

BANANKHAH, MAJID A

ART UNIT

PAPER NUMBER

2127

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/521,308

Applicant(s)
Fairman et al.

Examiner
Majid A. Banankhah

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2156



– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 9, 2000
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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1. This office action in response to paper number 7, reconsideration, which was filed on July 29, 2002. Applicant's argument concerning the rejection of claims have been fully considered but they are deemed to be moot in view of the new ground of rejection. Claims 1-42 are presented for examination.

2. The text of those sections of Title 35, U.S. code not included in this office action can be found in a prior Office action.

3. This office action in response to application filed on June 30, 1998. Claims 1-42 are presented for examination.

4. The non-statutory double patenting rejection, whether of the obvious-type or non-obvious-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); In re Van Ornam, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and In re Goodman, 29 USPQ2d 2010 (Fed. Cir. 1993).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78 (d). Effective January 1, 1994, a registered attorney or agent of record may sign a Terminal Disclaimer. A Terminal Disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of prior U.S. Patent No. 6,453,376 ('376').

The examiner can ascertain no difference between the claims of the present application and that of '376'. It is noted that the minor difference encompass replacement of the recitations of the limitations in the claims and it appears to be substantially the same or duplicate or in some instances obvious over one another. For example, claim 1, the three means of the claim in the instant application, i.e. "A resource characterization ...", "an allocation manager...", and "a processor coupled to ..." are exactly the same as the means in '376' Patent (see col. 10, lines 31-33, 42-44, and 57-58 respectively). In another words, the

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recitation of the limitations in claim 1 in the instant application are broader. One ordinary skill in the art would be motivated to use less sub-steps in order to expedite the process or method. As another example, claims 2-3 in the instant application are exactly the same as the claims 2-3 in '376' Patent. The limitation in claim 4 is recited in lines 35-37 of claim 1 in '376' Patent. Limitation in Claim 5 is recited in lines 45-46, and 52-55 of claim 1 in '376' Patent, and so on.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 21, 41-42 rejected under 35 U.S.C. 102(b) as being clearly anticipated Erickson et al. (U.S. Pat. No. 5,987,021).

Erickson et al. teaches of:

- resource characterization coupled to an electronic device (minimum level of resource for use in supporting request for that service, col. 2, lines 23-25, also, (determining shared resource access, col. 1, lines 57-68, continued on col. 2, lines 1-8);
- an allocation manager to handle requested process

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(resource allocator, Fig.1 106, and , col. 3, lines 40-57, and Fig.3);

- a processor for controlling allocation manager (Fig.3, processor, element 108).

7. Claims 2-20, 22-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference Erickson et al. (U.S. Pat. No. 5,987,021) in view of D'Angelo et al. (U.S. Pat. No. 5,574,911).

The reference of Erickson fails to explicitly teach of "the resource characterization include one or more resource listing and resource usage value that are required for an optimal performance". However, the reference of D'Angelo, in the same field of endeavor teaches of uses a method for controlling resource usage by network identities and by controlling usage by determining the amount of resource that is in use by a user and the amount that is requested (See col. 3, lines 53-67, the system of the present instant invention collects the particular constraint information germane to each device, also, col. 8, lines 54-68, the preferred embodiment uses a heuristic algorithm during each allocation phase, using the desired value for each resource). It would have been obvious for one ordinary skill in the art at the time the invention was made to use "controlling resource usage" of D'Angelo into "Dynamic allocation of resource"

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of Erickson for the reason to have a control over the usage of the resource also in order to prevent network usage exceed assigned consumption quotas.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Maid A. Banankhah** whose voice telephone number is (703) 308-6903. A voice mail service is also available at this number.

All response sent to U.S. Mail should be mailed to:
Commissioner of Patent and Trademarks
Washington, D.C. 20231

Hand-delivered responses should be brought to Crystal Park Two, 2021 Crystal Drive, Arlington. VA, Six Floor (Receptionist).
All hand-delivered responses will be handled and entered by the docketing personnel. Please do not hand deliver responses to the Examiner.

All Formal or Official Faxes must be signed and sent to either (703) 308-9051 or (703) 308-9052. Official faxes will be handled and entered by the docketing personnel. The date of entry

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will correspond to the actual FAX reception date unless that date is a Saturday, Sunday, or a Federal Holiday within the District of Columbia, in which case the official date of receipt will be the next business day. The application file will be promptly forwarded to the Examiner unless the application file must be sent to another area of the office, e.g., Finance Division for fee charging, etc.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Maid Banankhah

October 21, 2002


MASID A. BANANKHAH
PRIMARY EXAMINER